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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2792

Introduced by Assembly Member Bonta
(Principal coauthor: Assembly Member Alejo)
(Principal coauthor: Senator Leno)
(Coauthor: Assembly Member Lopez)

February 19, 2016

An act to add Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2792, as amended, Bonta. Local law enforcement agencies: federal immigration policy enforcement: ICE access.

Existing federal law authorizes issuance of an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department

to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

Existing law, commonly known as the TRUST Act, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes. Existing law defines specified terms for purposes of these provisions.

This bill, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, would ~~authorize~~ *require* a local law enforcement agency ~~to provide agency, prior to an interview between the United States Immigration and Customs Enforcement (ICE) with access to and an individual if certain conditions are met, as provided. in custody regarding civil immigration violations, to provide the individual a written consent form, as specified, that would explain, among other things, the purpose of the interview, that it is voluntary, and that the individual may decline to be interviewed. The bill would require the consent form to be available in specified languages. The bill would require a local law enforcement agency to provide copies of specified documentation received from ICE to the individual and to notify the individual regarding the intent of the agency to comply with ICE requests.~~ The bill would require that the records related to ICE access be public records for purposes of the California Public Records Act. The bill, commencing January 1, 2018, would require the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year, to hold at least one public community forum during the following year, as specified, to provide information to the public about ICE's access to individuals and to receive and consider public comment. ~~The bill would require the community forum to include a report by the local law enforcement agency about its policies and practices regarding ICE access to individuals and compliance with the TRUTH act. By requiring these local agencies to comply with these requirements, this bill would impose a state-mandated local program. The bill would also prohibit police and security departments of the California State University, community colleges, schools, and school districts from providing ICE access to any individual.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Transparent Review of Unjust Transfers and Holds (TRUTH) Act.
- 3 SEC. 2. (a) Transparency and accountability are essential
- 4 minimum requirements for any collaboration between state and
- 5 federal agencies.
- 6 (b) Recent immigration enforcement programs sponsored by
- 7 the United States Immigration and Customs Enforcement (ICE)
- 8 agency have suffered from a lack of transparency and
- 9 accountability.
- 10 (c) For example, a federal judge found that ICE “went out of
- 11 [its] way to mislead the public about Secure Communities,” a
- 12 deportation program in which ICE collaborated with local law
- 13 enforcement agencies to identify people for deportation.
- 14 (d) The Legislature further found that Secure Communities
- 15 harmed community policing and shifted the burden of federal
- 16 immigration enforcement onto local law enforcement agencies.

(e) Although ICE has terminated the Secure Communities program, it continues to promote a number of similar programs, including the Priority Enforcement Program, the 287(g) Program, and the Criminal Alien Program.

(f) The Priority Enforcement Program has many similarities to Secure Communities, including the checking of fingerprints for immigration purposes at the point of arrest; the continued use of immigration detainers, which have been found by the courts to pose constitutional concerns; and the reliance on local law enforcement to assist in immigration enforcement.

(g) Just as with Secure Communities, numerous questions have been raised about whether ICE has been transparent and accountable with respect to its current deportation programs.

(h) This bill seeks to address the lack of transparency and accountability by ensuring that all ICE deportation programs that depend on entanglement with local law enforcement agencies in California are subject to meaningful public oversight and meet certain minimum standards.

(i) This bill also seeks to promote public safety and preserve limited local resources because entanglement between local law enforcement and ICE undermines community policing strategies and drains local resources.

SEC. 3. Chapter 17.2 (commencing with Section 7283) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS

7283. For purposes of this chapter, the following terms have the following meanings:

(a) “Community forum” includes, but is not limited to, any regular meeting of the local governing body that is open to the public, where the public may provide comment, is in an accessible location, and is noticed at least 30 days in advance.

(b) “Hold request” means a federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D.

1 (c) “Governing body” with respect to a county, means the county
2 board of supervisors.

3 (d) “ICE access” means, for the purposes of civil immigration
4 enforcement, including when an individual is stopped with or
5 without their consent, arrested, detained, or otherwise under the
6 control of the local law enforcement agency, all of the following:

7 (1) Responding to an ICE hold, notification, or transfer request.

8 (2) Providing notification to ICE in advance of the public that
9 an individual is being or will be released at a certain date and time
10 through data sharing or otherwise.

11 (3) Providing ICE non-publicly available information regarding
12 release dates, home addresses, or work addresses, whether through
13 computer databases, jail logs, or otherwise.

14 (4) Allowing ICE to interview an individual.

15 (5) Providing ICE information regarding dates and times of
16 probation or parole check-ins.

17 (e) “Local law enforcement agency” means any agency of a
18 city, county, city and county, special district, or other political
19 subdivision of the state that is authorized to enforce criminal
20 statutes, regulations, or local ordinances; or to operate jails or to
21 maintain custody of individuals in jails; or to operate juvenile
22 detention facilities or to maintain custody of individuals in juvenile
23 detention facilities; or to monitor compliance with probation or
24 parole conditions.

25 (f) “Notification request” means an Immigration and Customs
26 Enforcement request that a local law enforcement agency inform
27 ICE of the release date and time in advance of the public of an
28 individual in its custody and includes, but is not limited to, DHS
29 Form I-247N.

30 (g) “Transfer request” means an Immigration and Customs
31 Enforcement request that a local law enforcement agency facilitate
32 the transfer of an individual in its custody to ICE, and includes,
33 but is not limited to, DHS Form I-247X.

34 ~~7283.1. (a) A local law enforcement agency shall have the~~
35 ~~discretion to provide ICE access to an individual if all of the~~
36 ~~following conditions are met:~~

37 ~~(1) The agency would have discretion to detain the individual~~
38 ~~on the basis of an immigration hold request pursuant to Section~~
39 ~~7282.5.~~

~~(2) The agency would not violate any local law or policy by providing access to the individual.~~

~~(3) The individual has been served with a copy of any ICE hold, transfer, or notification request issued for him or her and has been provided with~~

7283.1. (a) *In advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form in advance of any interview with ICE that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The written consent form shall also be available in any additional languages that meet the county threshold as defined in subdivision (d) of Section 128552 of the Health and Safety Code if certified translations in those languages are made available to the local law enforcement agency at no cost.*

(b) *Upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request. If a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.*

(c) *All records relating to ICE access provided by local law enforcement agencies, including all communication with ICE about that access ICE, shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), except that, where otherwise including the exemptions provided by that act and, as permitted under the Public Records Act, that act, personal identifying information may be redacted prior to public disclosure. Records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided*

1 *ICE access, the date ICE access was provided, and whether the*
2 *ICE access was provided through a hold, transfer, or notification*
3 *request or through other means.*

4 (d) Beginning January 1, 2018, the local governing body of any
5 county, city, or city and county in which a local law enforcement
6 agency has provided ICE access to an individual during the last
7 year shall hold at least one community forum during the following
8 year, that is open to the public, in an accessible location, and with
9 at least 30 days' notice to provide information to the public about
10 ICE's access to individuals and to receive and consider public
11 comment. ~~At the community forum, the local law enforcement~~
12 ~~agency shall report to the local governing body about its policies~~
13 ~~and practices regarding ICE access to individuals and its~~
14 ~~compliance with this chapter.~~ As part of this report, *forum*, the
15 local law enforcement agency ~~shall~~ *may* provide the governing
16 body with ~~any and all~~ data it maintains regarding the number and
17 demographic characteristics of individuals to whom the agency
18 has provided ICE access, the date ICE access was provided, and
19 whether the ICE access was provided through a hold, transfer, or
20 notification request or through other means. *Data may be provided*
21 *in the form of statistics or, if statistics are not maintained,*
22 *individual records, provided that personally identifiable*
23 *information shall be redacted.*

24 7283.2. Nothing in this chapter shall be construed to provide,
25 expand, or ratify the legal authority of any state or local law
26 enforcement agency to detain an individual based upon an ICE
27 hold request.

28 7283.3. ~~(a) Notwithstanding any other provision of this chapter,~~
29 ~~police and security departments of the California State University,~~
30 ~~California Community Colleges, schools, and school districts shall~~
31 ~~not provide ICE access to any individual.~~

32 ~~(b) The University of California is requested to comply with~~
33 ~~this section.~~

34 SEC. 4. The Legislature finds and declares that Section 3 of
35 this act, which adds Chapter 17.2 (commencing with Section 7283)
36 to Division 7 of Title 1 of the Government Code, furthers, within
37 the meaning of paragraph (7) of subdivision (b) of Section 3 of
38 Article I of the California Constitution, the purposes of that
39 constitutional section as it relates to the right of public access to
40 the meetings of local public bodies or the writings of local public

1 officials and local agencies. Pursuant to paragraph (7) of
2 subdivision (b) of Section 3 of Article I of the California
3 Constitution, the Legislature makes the following findings:

4 By requiring public meetings relating to the manner in which
5 local law enforcement entities cooperate with federal authorities
6 in enforcing federal immigration laws and making related
7 documents open to public inspection, this act furthers the purposes
8 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
9 California Constitution.

10 SEC. 5. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district under this act would result from a legislative mandate that
14 is within the scope of paragraph (7) of subdivision (b) of Section
15 3 of Article I of the California Constitution.